IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2009

CORAM

THE HONOURABLE MR. JUSTICE. C.S.KARNAN

C.M.A.No.98 of 2001

Shanmugam .. Appellant

Vs

1.Sagadevan
2.Sithra Transports
Tiruppur
3.United India Insurance Co., Ltd.,
Tiruppur
4.M.Muthusamy
5.National Insurance Co., Ltd.,
Bhavani .. Respondents
(Respondents 1,2,4 and 5 were
set exparte in MACT, hence given-up
in this CMA)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 20.11.2000, made in M.C.O.P.No.306 of 1998, on the file of the Principal District Court (Motor Accident Claims Tribunal), Erode.

For appellant : Mr.M.Manokaran

For respondents : No appearance

J U D G M E N T
The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Award and Decree, dated 20.11.2000, made in M.C.O.P.No.306 of 1998, on the file of the Principal District Court (Motor Accident Claims Tribunal), Erode, awarding a compensation of Rs.10,000/- with 12% interest per annum, from the date of filing the petition to till the date of realisation.

2.Aggrieved by the said Order, the appellant/petitioner has filed the above appeal praying for enhanced compensation of Rs.50,000/-.

3.The short facts of the case are as follows:
On 14.06.1996, at about 7.30 a.m. the petitioner was travelling as loading and unloading man, in the lorry bearing registration No.TNS 5329. The driver of the lorry was driving the said lorry at a moderate speed observing all the rules of traffic. While, the lorry was proceeding in the Perundurai to Coimbatore Main Road, namely NH 47, near D.C.E. College from east to west, a bus bearing

registration No.TN39 D9595 was coming from the opposite direction. The driver of the bus, the first respondent herein, was driving the said bus in a rash and negligent manner and in an uncontrollable speed and without observing the rules of traffic, came to the wrong side of the road and hit against the lorry in which the petitioner is travelling. In the said accident, driver of the lorry died on the spot and the petitioner and others sustained grievous injuries all over their body. Therefore, the accident had occurred only due to the rash and negligent driving of the first respondent and so, the first respondent, the driver; the second respondent, the owner of the bus and the third respondent, the insurer of the bus; the fourth respondent, the owner of the lorry and the fifth respondent, the insurer of the lorry jointly and severally liable to pay the compensation to the petitioner.

4.The Karumathampatti Police have registered a case in respect of the accident in Crime No.246/1996 and the same is pending investigation.

5.In the said accident, the petitioner sustained injuries in his right ear, left eye, right knee and all over his body. The petitioner was immediately taken to Government Head Quarters Hospital, Tiruppur and admitted as in-patient. The doctor, at the said hospital, on taking X-ray on his head had found that the petitioner had sustained fractures in his head. He was operated for treatment of this injury. The petitioner had taken treatment as in-patient for a month at the said Hospital and later on he had taken treatment as out-patient, in a private Hospital.

6.The petitioner was aged about 28 years on the date of the accident and he was a hale and healthy man at the time of the accident. The petitioner was working as a loading and unloading man and was earning a sum of Rs.3,000/- per month. He was the breadwinner of his family and contributed his entire income to his family and the entire family of the petitioner is depending upon the petitioner.

7.Since, the petitioner has sustained numerous injuries and as fractures sustained in the accident has caused him permanent disability, he is unable to do any work. The fracture sustained in his head has resulted in severe head ache and as such the petitioner has claimed a compensation of Rs.1,00,000/-.

8.As such, all the said respondents are jointly and severally liable to pay the compensation to the petitioner, under Section 166 of Motor Vehicles Act, with interest and costs.

9.The first, second and fourth respondents were absent and set-exparte. The common plea of the third respondent was that the alleged accident took place only due to rash and negligent act of the fourth respondent. There was no negligence on the part of the first respondent for the said road accident. The claim of the petitioner is excessive and liable to be dismissed.

10.The common plea of the fifth respondent was that the accident took place only due to the rash and negligent act of the first respondent. Even according to the claim petition, the accident was due to rash and negligent act of the first respondent. There was no negligence on the part of the fourth respondent, for the said accident. The claim of the petitioner is excessive and hence liable to be dismissed.

11.The Motor Accident Claims Tribunal framed two issues for the consideration namely:
(i) Whether the accident happened due to rash and negligent act of the first respondent?

(ii) Whether the petitioner is entitled to compensation? If so, to what extent?

12.The petitioner was examined as PW2. The petitioner's Doctor was examined as PW3. On the

petitioner's side nine documents ie.Exs.A1 to A9 were marked. No oral or documentary evidence was let in on the side of the respondents.

13.It is the specific case of the PW2, that the accident happened only due to the rash and negligent act of the first respondent. Though the third respondent contended that the accident was not due to the negligent act of the first respondent and that the accident had happened only due to the rash and negligent act of the fourth respondent, they have not substantiated the same at the time of the enquiry. Moreover, the facts of the accident was reported to Karumathampatti Police Station and the same was registered in Crime No.246/1996 against the first respondent. Ex.A1 is the copy of FIR. Ex.A2 is the copy of Observation Mahazar. Exs.A3 and A4 are the copies of Motor Vehicle Inspector's Report. Ex.A5 is the copy of Charge Sheet. As such, the Tribunal on perusal of evidence on record concluded that the accident occurred due to rash and negligent act of the first respondent.

14.For considering the nature of the injuries sustained by the petitioner in the accident, the Tribunal scrutinised Ex.A7, the copy of the Accident Register and Ex.A8, the certified copy of the Hospital Sheet. From these, the Tribunal was the view that the petitioner sustained grievous injuries in the said accident. The petitioner examined his Doctor as PW3, to prove that he had sustained permanent disability to the extent of 30%. The PW3, in his evidence, has opined that the petitioner had 30% permanent disability due to the accident and further had confirmed that the petitioner was suffering from giddiness, head-ache and fits. The Doctor has given his opinion only on the basis of records. He did not give any treatment to the petitioner at any point of time. The Tribunal could not accept the contention that just because the petitioner had stated that he is suffering from giddiness, head-ache and fits, it could not be taken that the petitioner was suffering from permanent disability to the extent of 30% as there was no documentary evidence furnished to establish the same like X-ray, Scan Report etc.,

15.So, the Tribunal, on the consideration that provides for a compensation of Rs.5,000/- for a grievous hurt and that the petitioner had taken treatment in the hospital from 14.06.1996 to 18.07.1996 as inpatient held that the petitioner is entitled to receive a compensation of Rs.10,000/- for the injuries sustained by the petitioner and accordingly granted the same.

16.The Tribunal directed the third respondent to pay the above said award with interest at the rate of 12% per annum from the date of petition to till the date of payment and permitted the petitioner to withdraw the amount after such deposit was made. The Advocate fees was fixed at Rs.1,000/-. Excess Court fees paid by the petitioner shall be refunded to the petitioner. The claim petition against R4 and R5 was dismissed without costs. The third respondent was also directed to pay a sum of Rs.1,057.50 being the cost of this petition to the petitioner.

17.The learned counsel appearing for the appellant has argued in his appeal that the Tribunal had failed to take into consideration the various materials produced by the claimant with regard to the injury and the learned Tribunal has not made proper assessment in computing the compensation of Rs.10,000/-. The learned Tribunal has failed to consider the evidence of PW3 regarding the nature and extent of the injuries sustained by the appellant. The PW3 in his evidence manifestly deposed that the appellant sustained 30% permanent disability. The Tribunal has not taken into consideration the documentary evidence, which has been marked as Exs.A6 to A9, by the expert Doctor(PW3). Further, the learned Tribunal has not given any reasons for disbelieving the evidence of PW3, who has manifestly deposed about the nature of the injuries. But, the learned Tribunal erred in holding that there is no evidence on record to prove the disability. Further, the Tribunal failed to note that the appellant has been disabled and so was not capable of doing the same work as he was doing before the accident. Further, the Tribunal had failed to consider the fact that the appellant was taking treatment in the Hospital from 14.06.1996 to 18.07.1996 as in-patient.

18.As such, the learned counsel appearing for the appellant had prayed for enhancement of compensation.

19.For the foregoing reasons and on consideration of the facts and circumstances of the case and award of the Motor Accident Claims Tribunal and grounds of appeal and arguments of the learned counsel for the appellant, the Court is of the opinion that the claimant took preliminary treatment at Government Head Quarters Hospital, Tiruppur. The Court is of the further opinion that it is an admitted fact that the claimant met with an accident, for which he took treatment as an in-patient from 14.06.1996 to 18.07.1996. The Doctor (PW3), who examined the claimant had certified that he had sustained 30% disability. But, the Motor Accident Claims Tribunal had awarded a sum of Rs.10,000/- alone for the injuries sustained by the claimant, which is not equitable. This Court feels that no reasons have been advanced by the Tribunal to disbelieve the quantum of disability as certified by the Doctor (PW3). Though, it may be true that the Doctor has not given any treatment, the Tribunal has not given any reasons to prove that the credibility of the Doctor was suspect. Only, the Doctor can be taken as a qualified and competent person to give Disability Certificate. So, the Court accepts the disability of the petitioner as 30%. Considering the period of treatment and Doctor's assessment of disability as 30%, this Court awards compensation as follows:
1.For 30% Disability : Rs.30,000/-
2.For pain and suffering : Rs. 5,000/-
3.For transport expenses : Rs. 1,000/-
4.For nutrition : Rs. 1,000/-
5.For medical expenses : Rs. 1,000/-

Rs.38,000/-

20.In total, this Court enhances the award amount from Rs.10,000/- to Rs.38,000/-. As far as the rate of interest is concerned, the original award of Rs.10,000/- carried an interest of 12% interest per annum from the date of filing the petition to till the date of payment. The additional award of Rs.28,000/- granted by this Court will carry an interest of 7.5% per annum from the date of filing the claim petition to till the date of payment. Now, this Court, after enhancement of the compensation from Rs.10,000/- to Rs.38,000/- is of the view that this enhanced award is equitable and fair considering the circumstances of the case.

21.This Court directs the third respondent/United India Insurance Company Ltd., to deposit the award amount as mentioned above, as per the interest fixed above, into the credit of M.C.O.P.No.306 of 1998, on the file of the Principal District Court (Motor Accident Claims Tribunal), Erode, within a period of six weeks, from the date of receipt of this Order.

22.As the accident happened in the year 1996, it is open to the appellant/claimant to receive the balance amount, lying into the credit of the M.C.O.P.No.306 of 1998, on the file of the Principal District Court (Motor Accident Claims Tribunal), Erode, by filing necessary payment out application, in accordance with law.

23.In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms and consequently, the award passed in M.C.O.P.No.306 of 1998, by the Motor Accident Claims Tribunal-Principal District Judge, Erode, is modified. No costs.

07.12.2009
Index: Yes/No
Internet: Yes/No

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To

1.Motor Vehicles Accident Claims Tribunal,
Principal District Court, Erode.

2. The Section Officer,
VR Section, High Court, Madras.

C.S.KARNAN, J.
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Pre-deliver Order in
C.M.A.No.98 of 2001

07.12.2009